

ESCOLASTICA MONTESCLAROS SON, AND HEIRS OF ANASTACIO SON, PETITIONERS, VS. CARMELINO SON, TEOFISTA SON, PRIMITIVO SON, CIPRIANA SON, ANATALIA SON, LAREANO SON, GERARDA SON AND T...

G.R. No. 73077. December 29, 1995

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

The Revised Rules of Court was promulgated to provide a fair, orderly, and systematic procedure in the prosecution and defense of cases. However, the rules are flexible and at times, in clearly meritorious instances, liberally applied. This is one of them.

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court to reverse and set aside the decision of the Court of Appeals in AC-G.R. CV No. 67364 dated 3 October 1985, the dispositive portion of which reads as follows:

WHEREFORE, for reasons abovementioned, we hold that the evidence was insufficient to sustain the verdict and judgment is contrary to law, and the decision of the trial court is hereby set side and judgment is rendered:

- (1) declaring the 'Deed of Absolute Sale' dated November 5, 1957 (Exhs. 'A' and '9') as null and void and of no legal effect;
- (2) ordering the defendants to turn over to plaintiffs the possession of the land in question with an area of 6,324 square meters;
- (3) ordering the defendants to pay plaintiffs the sum of P1,500.00 annually from 1972 until actual delivery of the land to plaintiffs as their share in the produce thereof.

Costs against defendants-appellees.

SO ORDERED.[1]

The facts material to the case are as follows:

Private respondents are the children and heirs of the late spouses Pedro Son, who died sometime in November 1957 and Marcelina Tudit who died on 2 January 1972.

Petitioners are the heirs of Anastacio Son, brother of Pedro Son.

During his lifetime, Pedro Son inherited from his parents Juan Son and Susana Perilla a parcel of land located at Caputatan Norte, Medellin, Cebu containing an area of two (2) hectares and seven (7) centares.

Sometime in 1972, upon discovery that a portion of said land, 6,324 square meters to be exact, was being

occupied by petitioners, private respondents demanded that the latter return the land to their possession. Petitioners refused and claimed that they owned the said portion as evidenced by a Deed of Absolute Sale allegedly executed by Pedro Son on 5 November 1957.[2]

On 2 September 1976 private respondents filed a complaint with the Court of First Instance of Cebu for annulment of the Deed of Absolute Sale dated 5 November 1957 on grounds of forgery and for recovery of real property.

On 7 December 1976, during the pre-trial conference, the parties agreed to limit the issue to the validity or invalidity of the aforementioned deed of absolute sale.[3]

On 10 September 1979 the trial court rendered a decision declaring the 5 November 1957 Deed of Absolute Sale null and void and ordering petitioners to return the subject land to private respondents. The dispositive portion reads, thus:

WHEREFORE, judgment is hereby rendered in favor of plaintiffs, and, accordingly, the 'Deed of Absolute Sale' dated November 5, 1957 (Exhs. 'A' and '9') is declared null and void and of no legal effect; and defendants are directed (a) to turn over to plaintiffs the possession of the land in question with an area of 6,324 square meters, more or less; (b) to pay plaintiffs as their share in the produce of the land the sum of P1,500.00 annually from 1972 until actual delivery of the possession of the land to plaintiffs, with interest thereon at the legal rate; and (c) to pay to plaintiffs the amount of P1,500.00 as attorney's fees. Costs against defendants.[4]

On 28 September 1979 petitioners filed a Motion for Reconsideration of the aforesaid decision insisting that by virtue of an earlier Deed of Sale with Right to Repurchase, dated 17 December 1951, wherein Pedro Son allegedly sold to petitioners one-half (1/2) of the land he inherited but with a right to repurchase within one (1) year, petitioners acquired ownership thereof for failure of Pedro Son to redeem the same within the period stipulated.[5]

On 27 December 1979 the trial court issued an order reversing its earlier decision, the dispositive portion of which reads as follows:

WHEREFORE, the judgment of this Court contained in its decision dated September 10, 1979, is hereby reconsidered and set aside, and another is entered dismissing the complaint and ordering plaintiffs to pay defendants jointly and severally the sum of P1,500.00 as attorney's fees, with costs against plaintiffs.

SO ORDERED.[6]

After their motion for reconsideration dated 24 January 1980 was denied by the trial court in its order of 5 March 1980,[7] private respondents appealed to the Court of Appeals.

In reversing the decision of the trial court on 3 October 1985, the Court of Appeals ruled, thus:

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Clearly, the question of validity of Exhibit '1' which is the 'Deed of Sale with Right to Repurchase' executed by Pedro Son on December 17, 1951 discussed by defendants in their motion for reconsideration had been waived by them. For indeed, the delimitation of issues at a pre-trial conference bars the consideration of other questions on appeal.

Defendants waited until the case was decided against them in the Court a quo before they raised -- on a motion for reconsideration, the issue of non-exercise by Pedro Son of his right to repurchase the land subject of Exhibit '1'. Defendants' failure to disclose this defense is contrary to the purpose and spirit of pre-trial procedure established and conducted by our courts. It deprived the plaintiffs of the opportunity to study and prepare to meet this

defense. The identity of the land subject of Exhibit `A' and the land subject of Exhibit `1' were not even established by sufficient evidence. Both as a weapon of attack and defense, surprise should not be tolerated under our Rules of Court.

Defendants are bound by the delimitation of the issues contained in the trial courts' order issued on the very day the pre-trial conference was held. Such order controls the subsequent course of action, unless modified before trial to prevent manifest injustice. In this case, modification of the pre-trial order was never sought at the instance of any party.[8]

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The Court of Appeals, however, upheld the trial court's ruling that the deed of sale dated 5 November 1957 was simulated, forged and therefore null and void.[9] Hence, the present petition for review, where the following issues are, raised:

I

WHETHER OR NOT THE DEED OF SALE WITH RIGHT TO REPURCHASE, ALTHOUGH NOT TAKEN UP AS ONE OF THE ISSUES DURING THE PRE-TRIAL, MAY BE ADMITTED IN EVIDENCE CONSIDERING THAT THE SAME WAS PROPERLY PLEADED AND THE ADVERSE PARTY NOT ONLY FAILED TO OBJECT TO THE PRESENTATION OF SAID DEED IN EVIDENCE BUT EVEN CROSS-EXAMINED EXTENSIVELY ON THE SAME DURING THE TRIAL.

II

WHETHER OR NOT THE APPELLATE COURT GRAVELY MIS-APPREHENDED THE FACTS OR HAD EMBARKED ON PURE CONJECTURE AND SURMISES WHEN IT REVERSED THE FINDING OF THE TRIAL COURT TO THE EFFECT THAT THE LAND COVERED BY THE DEED OF ABSOLUTE SALE DATED NOVEMBER 5, 1957 IS PART OF THE SAME LAND COVERED BY THE DEED OF SALE WITH RIGHT TO REPURCHASE DATED DECEMBER 17, 1951.

III

WHETHER OR NOT THE APPELLATE COURT'S CONCLUSION IS BASED ON PURE SPECULATION, CONJECTURE AND SURMISES, AND IN EFFECT VIOLATED THE RULE THAT PLAINTIFF MUST RELY ON THE STRENGTH OF HIS OWN EVIDENCE AND NOT ON THE WEAKNESS OF THE DEFENSE WHEN IT CONCLUDED THAT THE DEED OF ABSOLUTE SALE DATED NOVEMBER 5, 1957 IS NULL AND VOID — THE SAID CONCLUSION HAVING CAPITALIZED MAINLY ON THE SUPPOSED DISCREPANCY IN THE TESTIMONIES OF THE NOTARY PUBLIC AND THE DEFENDANT ANASTACIO SON BUT DISREGARDED TOTALLY THE UNDISPUTED FACT THAT SAID NOTARIAL DEED WAS ALREADY 18 YEARS OLD AND THAT THE DEFENDANTS (PETITIONERS HEREIN) HAVE BEEN OCCUPYING THE LITIGATED LAND IN CONCEPT OF OWNERS FOR MORE THAN 20 YEARS.[10]

There is merit in the petition.

We shall resolve the last issue first.

Petitioners' invocation of the principle that the plaintiff must rely on the strength of his own evidence and not on the weakness of the evidence of the defendant is misplaced. What is being assailed by petitioners is actually the

credibility of private respondents' witnesses. Petitioners persist in their argument that respondents' evidence, particularly the testimonies of Teofista Son Arcipe and her husband Andres Arcipe, are inherently weak for being self-serving and biased. Petitioners likewise fault the trial court and the appellate court for relying and capitalizing on the inconsistencies in the testimonies of their witnesses, Anastacio Son and Judge Teodoro Lim who notarized the 1957 Deed of Sale.[11]

It is a time-honored principle that the matter of giving credence to evidence presented is best addressed by the trial judge who is in a better position than the appellate courts to appreciate the weight and evidentiary value of the testimonies of witnesses who have appeared before him.[12]

After a meticulous review of the records we see no reason to depart from the findings of the Court of Appeals and the trial court. In the case at bench, we fail to discover any misapprehension of essential facts committed by both courts, which if considered, would have changed the outcome of the case.[13]

It was but logical for the trial court and the Court of Appeals to consider the numerous disparities and contradictions in the testimonies of petitioners' witnesses precisely because these were material inconsistencies which had a direct bearing on the issue of whether the 1957 deed of sale executed by Pedro Son was valid or not.

Nevertheless, in asserting their right to the disputed property, petitioners did not rely solely on the 1957 Deed of Sale. Petitioners, in addition, presented an earlier Deed of Sale with Right to Repurchase (dated 17 December 1951), allegedly covering the same lot, as evidence of their claim to the said property.

Petitioners contend that the agreement to limit the issue to the validity of the alleged Deed of Absolute Sale dated 5 November 1957, embodied in the pre-trial order, no longer controlled considering that private respondents failed to object when petitioners introduced the 1951 Deed of Sale with Right to Repurchase as evidence and, instead, even actively cross-examined Anastacio Son on his testimony regarding said deed. Private respondents' lapse, petitioners assert, amounted to a waiver.

We agree.

The issue, put simply, is whether or not the parties are bound by the delimitation of issues in the Pre-trial Order dated 7 December 1976.[14]

Section 4, Rule 20 of the Revised Rules of Court provides that:

SEC. 4. Record of pre-trial results.— After the pre--trial the court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, such order shall limit the issues for trial to those not disposed of by admissions or agreements of counsel and when entered controls the subsequent course of the action, unless modified before trial to prevent manifest injustice. (*Italics ours*)

A pre-trial hearing is meant to serve as a device to clarify and narrow down the basic issues between the parties, to ascertain the facts relative to those issues and to enable the parties to obtain the fullest possible knowledge of the issues and facts before civil trials and thus prevent that said trials are carried on in the dark.[15]

Pre-trial is primarily intended to make certain that all issues necessary to the disposition of a case are properly raised. Thus, to obviate the element of surprise, parties are expected to disclose at a pre--trial conference all issues of law and fact which they intend to raise at the trial, except such as may involve privileged or impeaching matters. The determination of issues at a pre-trial conference bars the consideration of other questions on appeal.[16]

However, as previously intimated, the rules are not applied with rigidity. To prevent manifest injustice, some

exceptions are admitted. The rules itself, specifically Section 5 of Rule 10 on Amended and Supplemental Pleadings, permits the following:

SEC. 5. Amendment to conform to or authorize presentation of evidence.— When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects, as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

In *Velasco v. Apostol*,^[17] we made the following qualification:

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.... A pre-trial order is not meant to be a detailed catalogue of each and every issue that is to be or may be taken up during the trial. Issues that are impliedly included therein or may be inferable therefrom by necessary implication are as much integral parts of the pre-trial order as those that are expressly stipulated.

In fact, it would be absurd and inexplicable for the respondent company to knowingly disregard or deliberately abandon the issue of non-payment of the premium on the policy considering that it is the very core of its defense. Correspondingly, We cannot but perceive here an undesirable resort to technicalities to evade an issue determinative of a defense duly averred.

Furthermore, as private respondent correctly points out, evidence to prove such late payment was introduced without any objection by the adverse party. This lack of objection amounts to an implied consent conferring jurisdiction on the court to try said issue. (Italics ours)

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The case at bar falls under this particular exception. Contrary to private respondents' contention, petitioners did not raise the issue of the 1951 Deed of Sale with Right to Repurchase only in their motion for reconsideration before the trial court. In their answer to private respondents' original complaint, petitioners categorically stated:

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5. That during his lifetime on December 17, 1951, the late Pedro Son sold to the herein defendants with right to repurchase for a consideration of Two Hundred Pesos, One-Half (1/2) of the property which the said Pedro Son inherited from his deceased parents, which was designated as Lot No. 4 in the deed of extrajudicial partition mentioned in the preceding paragraph 4 of this answer. Pedro Son was not able to repurchase the aforesaid portion sold to the defendants but the herein defendants did not take advantage of said failure to repurchase because they did not consolidate their ownership thereof.

6. Then on November 5, 1957, the said Pedro Son conveyed by way of absolute sale a portion consisting of 6,324 square meters of the share which he inherited from his deceased parents. A deed of absolute sale was executed by the said Pedro Son and acknowledged before the Honorable Teodoro T. Lim, Municipal Judge of Medellin, Cebu and Notary Public Ex-Officio, a copy of which deed of sale has been attached to the complaint as Annex `A'.^[18]

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Private respondents' failure to raise any objection : (a) when petitioners presented in evidence the 1951 Deed of Sale with Right to Repurchase;[19] (b) when petitioners' counsel vigorously cross-examined respondent Teofista Son Arcipe on the aforementioned deed;[20] and (c) when Anastacio Son testified on said document,[21] constitutes an implied assent on the part of respondents to depart from the issue contained in the pre-trial order.

Private respondents' implied consent to try the issue was further demonstrated by their own counsel's extensive cross-examination of petitioners' witness Anastacio Son regarding both the 1951 Deed of Sale with Right to Repurchase and the 1957 Deed of Absolute Sale.[22]

Private respondents cannot claim that they were not adequately prepared to meet petitioners' defense. They were simply not "caught in surprise." On the other hand, they had every opportunity to present rebuttal or counter-evidence on the issue.

On this point, we find most telling the testimony on cross-examination of private respondent Teofista Son Arcipe:

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Q

Now, while your father was still alive and particularly in the year 1951, did you know if your father had entered into any transaction concerning this land in question with the defendant Anastacio Son?

A

I don't know about that.

Q

You are not aware then that sometime on December 17, 1951 your father executed a deed of sale with the right to repurchase, in favor of Anastacio Son with respect to 1/2 of the land which he inherited from his parents?

A

I don't know about that.

Q

You claim to be familiar with the signature of your father, Pedro Son, if you would be shown a document bearing such signature, would you be able to recognize the same?

A

Yes, sir.

Q

Alright. I am showing to you a document executed on December 17, 1951 and acknowledged before municipal judge Sabas Y. Quijano, which purportedly bears the signature of Pedro Son, do you recognize the signature of your father Pedro Son on this document?

A

This signature is the signature of Pedro Son.[23]

Finally, we find that the land subject of the 1951 Deed of Sale with Right to Repurchase was the same property subject of the 1957 Deed of Absolute Sale.

Both deeds referred to the share of Pedro Son, the vendor, in the property which he and Anastacio Son and the rest of their brothers and sisters inherited from their deceased parents.

The 1951 deed referred to "lot number four representing my (Pedro Son's) share according to the extra-judicial partition made on September 17, 1942..."[24] The aforesaid extra-judicial partition, in turn, concerns the division of the property located in Caputatan Norte, Medellin, left by Juan Son and Susana Perilla among their children including Pedro and Anastacio.[25]

On the other hand, the 1957 deed referred to "a part of my (Pedro Son's) share, title, right, and participation over a parcel of land located at the Barrio of Caputatan Norte, Municipality of Medellin, Province of Cebu, Philippines, to which I, together with my seven brothers and sisters, inherited from our deceased parents Juan Son and Susana Perilla..."[26]

From the foregoing, there can be no dispute then as to the identity of the property subject of the 1951 and 1957 deeds. They are the same.

Private respondents' insistence that the 1951 and 1957 deeds are unrelated on grounds that the areas (1/2 of Pedro Son's share in the 1951 deed and only 6,324 square meters in the 1957 sale) and consideration (P200.00 in the 1951 deed and P350.00 in the 1957 document) are different deserves little merit.

We do not find peculiar Anastacio Son's explanation that he simply acceded to his brother's plea to reduce the area of the disputed lot and the P350.00 given by Anastacio to Pedro to pay for the latter's food expenses be just considered as additional payment,[27] close family ties being a common Filipino trait.

WHEREFORE, premises considered, the petition is GRANTED and the appealed decision is hereby REVERSED AND SET ASIDE and the judgment of the trial court REINSTATED.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Hermosisima, Jr., JJ., concur.

[1] Rollo, p. 53.

[2] Id., at 50.

[3] Record on Appeal, p. 14.

[4] Record on Appeal, p. 25.

[5] Rollo, p. 50.

[6] Record on Appeal, p. 65

[7] Id., at 92.

[8] Rollo, p. 51.

[9] Ibid.

[10] Petitioners' Memorandum, pp. 2-3.

[11] Petitioners' Memorandum, p. 17.

[12] Heirs of Juan Oclarit v. Court of Appeals, 233 SCRA 239 (1994) citing Sapu-an v. Court of Appeals, 214

SCRA 701 (1992).

[13] Ibid.

[14] Record on Appeal, p. 14.

[15] Fortune Corporation v. Court of Appeals, 229 SCRA 355 (1994).

[16] Caltex (Phils.), Inc. v. Court of Appeals, 212 SCRA 448 (1992); See also Bergado v. Court of Appeals, 173 SCRA 497 (1989); Dy, Jr. v. Court of Appeals, 198 SCRA 826 (1991); Macaraeg v. Court of Appeals, 169 SCRA 259 (1989); Lucenta v. CFI of Bukidnon, 162 SCRA 197 (1988); Muñasque v. Court of Appeals, 139 SCRA 533 (1985).

[17] 173 SCRA 228 (1989).

[18] Record on Appeal, pp. 8-9.

[19] Exhibit 1, Folder of Exhibits, p. 23.

[20] TSN, 22 June 1978, pp. 5-7.

[21] TSN, 14 December 1978, pp. 66-72.

[22] TSN, 8 February 1979, pp. 3-19.

[23] TSN, 23 June 1978, pp. 5-8.

[24] Exh. 1, Folder of Exhibits, p. 23.

[25] Exh. 7, Folder of Exhibits pp. 31-33.

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Lot No. 4 is for Pedro Son with the following adjoining owners:

North - Vidal Son;

East - Go Chan;

South - Anastacio Son; and

West - Filomeno Mendares

Area - 2 hectares and 17 centares

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[26] Exh. 9, Folder of Exhibit, p. 37.

[27] TSN, 14 December 1978, pp. 66-74.

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